

One Embarcadero Center, 16th Floor
San Francisco, CA 94111-3628
tel: 415 781.1919 fax: 415 781.2635

RESPONSE TO OFFICE ACTION

September 19, 2003



Mail Stop Non-Fee Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RECEIVED
OCT 03 2003
TC 1700

Application: 10/071,977
Applicant: Simon K.C. Yung
Filing Date: February 6, 2002
Examiner: Drew E. Becker, Art Unit 1761

Dear Mr. Becker:

Applicant responds to the Office Action dated May 30, 2003 as follows:

Extension of Time

By the accompanying "Petition for Extension of Time Under 37 CFR 1.136(a)" and payment of the appropriate fee, Applicant requests a retroactive three-month extension of time to reply due to unavoidable circumstances.

Request for Reconsideration

Applicant respectfully requests reconsideration of the Examiner's restriction requirement.

"Process and apparatus for its practice can be shown to be distinct inventions, if either or both of the following can be shown: (1) that the process *as claimed* can be practiced by another materially different apparatus or by hand, or (2) that the apparatus as claimed can be used to practice another and materially different process." MPEP § 806.05(e). The Examiner contends that restriction is proper in the instant case because the process defined by Claims 24-27 can be practiced by another materially different apparatus; the sole example cited is a device lacking a baking pan.

"The burden is on the examiner to provide *reasonable* examples that recite *material* differences." MPEP § 806.05(e) (emphasis supplied). If there is no material difference, the burden is on the examiner to document another materially different apparatus or withdraw the restriction requirement. *See id.* In this instance, removal of the baking pan from the breadmaker does not yield a materially different apparatus, especially since the baking pan is designed to be removable. Since the Examiner has not documented a materially different apparatus, he has failed to establish the existence of two distinct inventions and thus the restriction requirement should be withdrawn.

Election of Invention

To comply with the Examiner's restriction requirement, Applicant provisionally elects to pursue the invention defined by Claims 1-23, a breadmaker with improved temperature and humidity control.

Respectfully submitted,

SEDGWICK, DETERT, MORAN & ARNOLD LLP

A handwritten signature in cursive script, reading "Neeraj Bali".

By

Neeraj Bali
Reg. No. 47,402
Attorney for Applicant